Bail Slip

The Appellants/ Accuseds No.3 K. Subramani and No.4 S.Nagaraj were directed to be released on Bail in and by the order of this Court dated 17.3.2003 made in Crl.M.P.No.1702 of 2003 in Crl. Appeal No.293/2003 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-06-2006

CORAM:

THE HON'BLE MR.JUSTICE M.KARPAGAVINAYAGAM
AND
THE HON'BLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 293 of 2003

1. K.Subramani
2. S.Nagaraj ..Appellants

-vs-

The State of Tamilnadu
represented by
The Sub Inspector,
Karungalpalayam Police Station,
Erode .. Respondent

This appeal is filed against the Judgment passed in S.C.No.82 of 2001 dated 22.7.2002 on the file of the I Additional Sessions Judge-cum-Chief Judicial Magistrate, Erode.

For appellants: : Mr.T.Gowthaman
For respondent: : Mr.V.R.Balasubramaniam
Government Advocate.

JUDGMENT

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A.C.ARUMUGAPERUMAL ADITYAN

This appeal has been preferred against the Judgment in S.C.No.82 of 2001 on the file of the I Additional Sessions Judge-cum-Chief Judicial Magistrate, Erode dated 22.6.2002 by A3 (K.Subramani) and A4(Nagaraj).

2. The short facts of the prosecution case relevant for the purpose of deciding this appeal are as follows:

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Due to previous enmity, on 12.10.1998 at about 7.00p.m., appellants A3 and A4 in S.C.No.82 of 2001 along with two other accused picked up quarrel with the deceased Thomas at Door No.167, P.C.T.Tyre shop, Park Road, Erode. In furtherance of the common intention, A1 had assaulted with a knife on the neck and stomach of Thomas and A2 with a knife had assaulted on the right cheek and back of Thomas and the present appellant A3 had assaulted the said Thomas with an aruval on the head and also A1 stabbed with a knife on the stomach of Kunjammal (P.W.16)and A3 had also assaulted witness Natarajan (P.W.1) with an aruval on the left cheek and left shoulder and A4 had stabbed Natarajan (P.W.1) with a knife on the back and after the occurrence, Thomas was taken to Government Hospital, Erode where he was declared dead, due to the injuries caused by the accused. The injured Natarajan had preferred a complaint Ex P1 with P.W.17 Sub Inspector of Police, Karungalpalayam Police Station, who had registered a case in Crime No.853/98 under Sections 302,307,324 IPC. The case was also taken on file by the Judicial Magistrate No.I,Erode and after furnishing copy under Section 207 Cr.P.C.. The learned Judicial Magistrate has committed the case to the Court of Sessions under Section 209 Cr.P.C. for trial. The learned District Judge, Erode has taken the case for trial and framed charges under Section 302 r/w 34 IPC as against A1 to A3 and under Section 302 r/w 109 IPC against A4 and as against A1 under Section 307 IPC and as against A3 and A4 under Section 324 IPC and when the accused were questioned, they pleaded not guilty.

3. On the side of the prosecution side P.Ws1 to 18 were examined and Exs P1 to P21 and M.Os 1 to 10 were marked.

4. P.W.1 Natarajan, is the author of Ex P1 complaint. He is an injured witness. According to P.W1,on 12.10.1998 at about 7.00p.m., he went to the house of Thomas, who was a tenant under him to collect the rent from him and that at that time , four persons came there with a knife and that they picked up quarrel with Thomas and suddenly they assaulted Thomas with a knife causing grievous injuries and also they assaulted the wife of Thomas, ie., Kunjammal(P.W.16) with a knife on the stomach and P.W.1 who intervened to prevent the accused from assaulting Thomas and his wife was also assaulted by the accused Nos.3 and 4 and that he took the injured Thomas and Kunjammal in an Autorickshaw belonging to P.W.8 and admitted them in the Government Hospital, Erode for treatment where Thomas was declared dead by the Doctor and that he as well as Kunjammal were given treatment in the said hospital and Ex P1 is the complaint preferred by him to the police. Since he could not identify the accused, he was treated as a hostile witness. P.W.2 to P.W.6 have failed to support the case of the prosecution. Hence, they were treated as hostile witnesses. P.W.7 is the Mahazar witness in whose presence Ex P2 was prepared and M.Os 1 to 6 were recovered

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by the Investigating Officer. A1 and A2 were also arrested on 17.10.1998 at about 6.00p.m., by the Inspector of Police in the presence of P.W7 and the confession statement of A1 and A2 were recorded and in pursuance of the confession statement of A1, M.O.7 Shirt and in pursuance of the confession statement of A2, M.O.8, T-Shirt were recovered under E xP6 Mahazar in the presence of P.W.7. P.W.9 is the Judicial Magistrate, who had recorded Ex P8 dying declaration from Kunjammal, while she was taking treatment at the Government Hospital, Erode on 12.10.1998 at about 22.00 hours. P.W.10 is the Doctor, who had examined the injured Kunjammal and issued Ex P10 Wound Certificate . Ex P9 is the copy of the Accident Register. He has also examined P.W.1 Natarajan on the same day at about 8.05 p.m., and issued Ex P12 Wound Certificate. Ex P11 is the copy of the Accident Register. P.W.11, who had conducted an autopsy had issued Ex P13 Post-mortem Certificate. P.W.12 is the Grade I Police Constable of Karungalpalayam Police Station ,who had delivered the Express FIR to the concerned Officials. P.W.13 is the then Head Clerk of Judicial Magistrate No.I, Erode, who had deposed that the material objects connected with this case were sent to forensic laboratory for chemical examination, on the basis of the requisition Ex P15 and Ex P16 is the chemical analyst's report and Ex P17 is the serological report. P.W.14 is the Grade I Police Constable, who had produced the corpse of Thomas for post mortem and after post mortem had recovered M.O.9 Lungi and M.O.10 Jatty from the corpse and produced to the Investigating Officer with his Report Ex P18. P.W.15 is the Photographer, who had taken photographs of the place of occurrence. P.w.16 is the wife of the deceased Thomas, who is also an injured in the occurrence. According to P.W.16, her husband Thomas was a tenant in the house belonging to P.W.1 for a monthly rent of Rs.400/- and was conducting a tyre re-trading shop and that on 12.10.1998 at about 7.00p.m., while she and her husband and the owner of the house namely P.W.1 Natarajan were chatting, A1 to A4 came to the house with deadly weapons (A1, A2 and A4 with knife each and A3 with an aruval) and enquired about her sons and that they picked up quarrel with her husband and A1 had assaulted her husband Thomas with a knife on the neck and below the stomach and A2 had assaulted her husband Thomas with a knife on the chin, on the back and also on the left cheek. A3 Subramani had assaulted her husband Thomas on the head with an aruval and that while she intervened to prevent the accused from assaulting her husband, A1 had stabbed on the right of her stomach and when P.W1 Natarajan came to her rescue was assaulted by A3 with aruval on the left cheek and left shoulder causing grievous injuries and A4 also assaulted P.W1. Natarajan with knife on the back and after assaulting, the accused left the scene of occurrence by throwing the weapons and that injured were taken to Government Hospital, Erode, where the Doctors pronounced her husband dead and that she and P.W1 Natarajan were treated in the hospital and that she gave Ex P8

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statement to the Magistrate .P.W.17 is the Sub Inspector of Police, who had registered FIR under Ex P19. P.W.18 is the Inspector of Police, who had visited the place of occurrence and prepared Observation Mahazar and rough Sketch Ex P20 and has also recovered blood stained weapons (aruval and three knives) used by the accused, blood stained sand and sample sand under Mahazar and he had conducted an inquest in the presence of witnesses and Ex P21 is the inquest report and arrested the accused A1 and A2 and also recorded their confession statement and also seized blood stained shirts produced by the accused on the basis of the confession statement. After knowing that A3 and A4 surrendered before the Judicial Magistrate, Coimbatore and after completing the investigation, he has filed charge sheet against the accused.

5. On the basis of the evidence on the side of the prosecution question under Section 313 Cr.P.C. were put to the accused, who have totally denied the charges. The accused have not examined any witness on their side. After going through the oral and documentary evidence, the learned Sessions Judge, has come to a conclusion that the charges levelled against A1 to A3 under Section 302 IPC was proved and convicted and sentenced them to undergo life imprisonment and has also held that A1 is liable under section 307 IPC and A2 to A4 are also liable under Section 307 IPC read with 34 IPC. and convicted and sentenced to undergo seven years rigorous imprisonment each and has also convicted A4 under Section 302 IPC read with 34 IPC and sentenced to undergo life imprisonment. The accused were found not guilty under Section 324 and under Section 324 IPC read with 34 IPC and were acquitted under the charges.

6. Aggrieved by the findings of the learned Sessions Judge, A3 and A4 have preferred this appeal.

7. Now the points for determination in this appeal are

1) Whether the charge under Section 302 and 307 read with 34 IPC against A3 and charge under Section 302 read with 34 IPC and under Section 307 r/w 34 IPC against A4 have been proved beyong any reasonable doubt?

2) Whether the conviction and sentence against A3 and A4 by the learned Sessions Judge in S.C.N0.82/2001 on the file of the I Additional Sessions Judge-Cum-Chief Judicial Magistrate, Erode is liable to be set aside for the reasons stated in the memorandum of appeal?

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8.Point No.1:

A3 was convicted by the learned Sessions Judge for the offence punishable under Section 302 IPC and also under Section 307 r/w 34 IPC. A4 has been convicted by the learned Sessions Judge for the offence punishable under Section 302 r/w 34 IPC and also under Section307 r/w 34 IPC. Out of 18 prosecution witnesses, P.W.1 and P.W.16 alone speak about the occurrence and they are the injured witnesses. P.W.1 is the author of Ex P1 complaint dated 12.10.1998. According to P.W.1, at the time of occurrence, the accused had assaulted him on the left cheek, left fore arm with a knife, after assaulting Thomas, who died in the occurrence and his wife P.W.16 Kunjammal. P.W.1 has deposed to the fact that at the time of occurrence, four persons came to the residence of Thomas and picked up quarrel and assaulted him. Since he has failed to identify the accused by name to the effect that which of the accused had assaulted him and Thomas and Kunjammal individually by name, he was treated as hostile witness by the learned Public Prosecutor and on the other hand P.W.16 the wife of Thomas, who had also sustained injuries in the same occurrence in her evidence, had identified the accused, who had assaulted her husband Thomas, herself and P.W.1 Natarajan. P.W.16 in her evidence has categorically stated that A1 had assaulted her husband Thomas with a knife and A2 has also assaulted her husband with a knife and A3 Subramani had assaulted her husband on the head with an aruval and A3 has also assaulted P.W.1 Natarajan on the left cheek and left shoulder with an aruval and A1 had assaulted her with a knife on the right side of the stomach. She has further deposed that A4 has stabbed on the back of P.W1 with a knife. The evidence of P.W16 was corroborated by the evidence of Doctor P.W10, who had treated P.W.16 soon after the occurrence and issued Ex P9 copy of Accident Register and ExP10 Wound Certificate. P.W.10 has spoken to the fact that on examination of P.W.16, after the occurrence, he could see a stab injury to an extent of 3 x 1/2cm on the right side of the stomach. The Doctor has opined that the said injury would have been caused by the knife shown to him in the Court. According to P.W.16, the said injury was caused to her by A1 with a knife. According to P.W.10, the Doctor, P.W.1 sustained a cut injury to an extent of 6 x ½ x ¼ cm on the left side of the face, another cut injury to an extent of 5 x ½ x ½ cm on the left shoulder and also an abrasion to an extent of 6 x ½ cm on the back side of the neck and that the above said three injuries are simple in nature and the Doctor has opined that the above said injury would have been caused by the weapon shown to him in the Court and Ex P11 is the copy of the Accident Register and Ex P12 is the Wound Certificate relating to P.W.1.

9. The learned counsel appearing for the appellants would contend that the learned Sessions Judge, after giving a finding that the evidence of P.W.1 the injured cannot be relied on, since he has been treated as hostile witness, erroneously had convicted

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A3 and A4 on the evidence of P.W.16, which is illegal. The learned counsel relying on Ex P8 would contend that While P.W.16 was in the hospital under treatment, has only mentioned the name of A1 and A2 but has not mentioned the name of A3 and A4. Subsequently,she developed her case, while deposing before the Court as P.W.16 by inducting A3 and A4 as co assailants, who had assaulted P.W1 and P.W.16. But there is no motive attributed against P.W.16 to implicate falsely the accused Nos.3 and 4in this case. Even in Ex P8, P.W.16 has stated that the assailants belong to her locality. While deposing before the Court, P.W.16 has named the persons, who had assaulted her husband Thomas and also P.W.1 with knife and aruval respectively at the place of occurrence. So the failure to name the assailants by P.W.1 will not derive us to come to a conclusion that A3 and A4 are not the assailants of P.W.1 at the time of occurrence. The evidence of P.W.16 is clear to the fact that the assailants of P.W.1 are A3 and A4. According to P.W.16, A3 has assaulted her husband Thomas with aruval on the head. This evidence was corroborated by the medical evidence ie.,by P.W11 the Doctor who had conducted the Post-mortem. P.W.11 has deposed that 6th injury on the corpse of Thomas was to an extent of 3 x 2 cm deep cut injury on the right side of the head. So the conviction and sentence under Section 302 IPC by the learned Sessions Judge against A3, in our opinion, is to be upheld. The injury caused by A3 to P.W1 was only simple in nature as per Ex P12. So, A3 is liable to be convicted only under Section 324 r/w 34 IPC. Further, A4 , according to P.W.16, has stabbed on the back of P.W.1 with a knife. According to P.W.10, the Doctor, there was only an abrasion seen on the back of the neck to an extent of 6 x ½ cm which is also a simple injury. As far as A4 is concerned, according to P.W.16, he had assaulted , P.W.1 with a knife on the back and A4 has not inflicted any injury to the deceased Thomas or to herself. If A4 has a common intention to kill Thomas, then A4 would have also assaulted Thomas but he has not done so. Under such circumstances, the conviction and sentence of A4 under Section 302 r/w 34 IPC by the learned Sessions Judge is liable to be set aside and the same is hereby set aside and A3 and A4 are liable to be convicted under Section 324 IPC for the simple injury, they have caused to P.W.1 at the place of occurrence besides A3 is liable to be convicted under Section 302 IPC for having assaulted Thomas with aruval on the head.

10. The conviction and sentence, in respect of A3 under Section 302 holds good because A3 has assaulted the deceased Thomas with an aruval on the head, has been proved in this case. Under such circumstances, We hold that the conviction and sentence of A3 under Section 302 IPC is sustainable but the conviction and sentence of A3 and A4 under Sections 307 r/w 34IPC are liable to be set aside but A3 and A4 are convicted under Section 324 IPC. The point No.1 is answered accordingly.

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11. Point No.2:

In view of our findings in the previous point, we hereby confirm the conviction and sentence against A3 under Section 302 IPC. But the conviction and sentence against A3 under Section 307 r/w 34 IPC is set aside and A3 is convicted under Section 324 IPC and sentenced to undergo rigorous imprisonment for six months. The conviction and sentence under Section 302 r/w 34 IPC against A4 is hereby set aside but A4 is convicted under Section 324 IPC and sentenced to undergo rigorous imprisonment for six months. The period already undergone is set off. The appeal by A3 against conviction and sentence under Section 302 IPC is hereby dismissed. A3 is to be secured to undergo the remaining part of the sentence awarded by the learned Sessions Judge under Section 302 IPC. In other respects, the findings of the learned Sessions Judge is confirmed. The sentence under Section 324 IPC against A3 is to run concurrently.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To

1. The I Additional Sessions Judge-cum-Chief Judicial Magistrate Erode.
2. The Principal Sessions Judge, Erode.
3. The Judicial Magistrate No.I,Erode
4. The Chief Judicial Magistrate, Erode.
5. The Sub Inspector of Polcie, Karungalpalayam Police Station Erode.2
6. The Director General of Police, Mylapore, Chennai-4
7. The Superintendent , Central Prison, Coimbatore
8. The District Collector, Erode.
9. The Public Prosecutor, High Court, Madras-104

1 cc to Mr.T.Gowthaman, Advocate, Sr. 24537

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